



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

August 27, 2003

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Heil
Registered Agent
Heil Tires, Inc.
Bargain Barn Tire Center
1811 Deadwood Avenue
Rapid City, SD 57702-0377

RE: UNDERGROUND INJECTION CONTROL (UIC)
Proposed Administrative Order and
Opportunity to Request a Hearing

Dear Mr. Heil:

The enclosed document is a Proposed Administrative Order (PAO) and Opportunity to Request a Hearing for violations of the Safe Drinking Water Act (SDWA). Please read the PAO soon and carefully, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalty. Also enclosed is a copy of the Rules of Practice that govern these proceedings, and, in case you meet the criteria, an information sheet about the Small Business Regulatory Fairness Act.

Any person who violates any requirement of the UIC program is subject to enforcement action under Section 1423 of the SDWA (42 U.S.C. Section 300h-2, et seq.). Enforcement may include administrative penalties of \$5,500 per day for each violation up to a maximum penalty of \$137,500, and civil penalties of up to \$27,500 per day for each violation, and will mandate compliance with all provisions of the SDWA. In addition, if the violation is willful, the SDWA authorizes criminal prosecution in accordance with Title 18 of the United States Code.

You are required to take action in less than 30 days, to avoid the possibility of having a default judgment entered against you that would impose the penalty amount in the PAO.



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Whether or not you request a hearing, we encourage you to confer informally with EPA concerning the alleged violations to try to negotiate a settlement. You may wish to appear at an informal conference yourself and/or be represented by your counsel. To arrange for such a conference, please contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the thirty (30) day period during which a request for hearing must be submitted.

Public Notice of EPA's PAO and the opportunity to provide written comments on the PAO is also being provided pursuant to Section 1423(c)(3)(B) of the SDWA [42 U.S.C. Section 300h-2(c)(3)(B)]. Any person who comments on the PAO has a right to participate in the hearing, if there is one.

If you have any technical questions relating to this matter, please call Judy Binegar-Wilson, UIC Enforcement Team, Technical Enforcement Program, at (303) 312-6606. All legal questions can be directed to Jim Eppers at (303) 312-6893. Ms. Wilson and Mr. Eppers can also be reached at the following address:

Judy Binegar-Wilson (8ENF-T)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

OR

James H. Eppers (8ENF-L)
Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Administrative Order and
Opportunity to Request a Hearing
40 C.F.R. Part 22

Public Notice

U.S. EPA Small Business Resources Fact Sheet

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
)	
HEIL TIRES, INC.)	
and)	Docket No. SDWA-08-2003-0047
JAMES HEIL)	
Rapid City, South Dakota)	
Respondents)	
)	PROPOSED
Proceedings Under Section 1423(c))	ADMINISTRATIVE ORDER
of the Safe Drinking Water Act,)	AND OPPORTUNITY TO
42 U.S.C. § 300h-2(c))	REQUEST A HEARING

STATUTORY AUTHORITY

This Proposed Administrative Order and Opportunity to Request a Hearing (Order) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1423 of the Safe Drinking Water Act (Act), 42 U.S.C. § 300h-2(c). Authority to take this action has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, EPA, Region 8.

FINDINGS

1. Heil Tires, Inc., as of June 18, 2002 and to the present, is a corporation organized in the State of South Dakota and is authorized to do business in the State of South Dakota. Heil Tires, Inc. is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. James Heil is an individual and is a 'person' within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300f(12).

3. Heil Tires, Inc. and James Heil are referred to jointly in this Order as "Respondents".

4. James Heil owned and operated the automotive engine repair and maintenance facility formerly known as Bargain Barn Tire Center (Bargain Barn), located at 1811 Deadwood Avenue, Rapid City, South Dakota, from April 1, 2002 to June 17, 2002.

5. On June 18, 2002 the business located at 1811 Deadwood Avenue, Rapid City, South Dakota, was incorporated under the name Heil Tires, Inc.

6. Pursuant to Section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. Part 147 Subpart QQ, Section 147.2101(b), EPA administers the Underground Injection Control (UIC) Program for Class I, III, IV, and V wells in the State of South Dakota. The effective date of the program is December 30, 1984. The program requirements are located at 40 C.F.R. Parts 124, 144, 146, 147, and 148.

7. Pursuant to 40 C.F.R. § 144.3, the term "Director", as used in 40 C.F.R. Parts 124, 144, and 146, means the EPA Regional Administrator in states such as South Dakota where there is no EPA approved state UIC program.

8. On or about July 30, 2001 EPA mailed a Class V Injection

Well Inventory Information Request letter to Bargain Barn via certified mail. The letter was delivered to and received by Bargain Barn on or about August 1, 2001 (certified 7001 0320 0006 0659 3455). The inventory information was not submitted to EPA by Bargain Barn within the required 30 days of receipt of the letter. In fact, to date, the inventory information still has not been submitted to EPA.

9. On or about September 25, 2001 an EPA representative performed a routine inspection of Bargain Barn. The EPA inspector found on site a UIC Class V type fluid disposal system, which EPA designates as a Class V injection well.

10. Motor vehicle waste disposal wells are defined at 40 C.F.R. §144.81(16) as follows: "Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work."

11. Septic tanks with drain fields, dry wells, cesspools, sumps with outlet pipes and any other types of disposal systems which allow fluids to move into underground sources of drinking water (USDWs) are considered shallow injection wells.

Respondents' disposal system, as identified in the inventory verification inspection in paragraph 9 above, is classified as a

"Class V Injection Well" as defined by 40 C.F.R. §144.6 and §146.5 and is a motor vehicle waste disposal well as defined by 40 C.F.R. §144.81(16). Respondents are currently authorized by rule (40 C.F.R. §144.24) to operate the disposal systems described above. Respondents are therefore subject to applicable requirements of 40 C.F.R. § 124, §144 and §146.

12. On or about November 8, 2001, EPA mailed another Inventory Request Form with a Class V well compliance letter to Bargain Barn via certified mail (7001 0320 0005 9387 2403). The letter was delivered to and received by Bargain Barn on or about November 15, 2001. The letter required Bargain Barn to permit or close the well and to submit the required inventory information within 30 days of receipt of the letter, neither of which was done by Bargain Barn.

13. On April 1, 2002, the ownership of the Bargain Barn was transferred from Ben's Incorporated to Respondent James Heil, who had been employed by Ben's Incorporated as the manager of the facility.

14. On or about June 13, 2002 an EPA Representative performed another compliance inspection of Respondents' facility. The EPA representative found that the Class V disposal system was still active.

15. On or about August 16, 2002 EPA mailed a UIC Notice of

Noncompliance letter to Respondents via certified mail. The letter was delivered to and received by Respondents on or about August 20, 2002 (certified 7001 0320 0005 9387 4902).

Respondents were informed that they were in violation of 40 C.F.R. §144.12(c) for failing to comply with the requirements of a prior letter sent by EPA to Ben's Inc. (and copied to Respondent James Heil, as operator of Bargain Barn) dated December 13, 2001. That letter required Bargain Barn to 1) contact EPA, in writing, within fifteen (15) days of receipt of the August 16, 2002 letter with plans for alternate disposal and closing the Class V disposal system; 2) permanently close the system within thirty (30) days of receipt of the letter; and 3) provide EPA with subsequent documentation of the closure. None of these requirements were complied with by Respondents. On July 9, 2003 EPA received from Respondent James Heil correspondence evidencing that the Class V system had been closed on January 9, 2003.

16. On or about June 26, 2003, EPA inspectors performed another compliance inspection of Respondents' facility. They found that Respondents had closed the Class V disposal system.

17. **Respondents are in violation** of 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) for operating and maintaining Class V disposal facility which, through its injection activity, may have allowed movement of fluid containing contaminants in

concentrations above the maximum contaminant level for primary drinking water standards into underground sources of drinking water. The failure to discontinue the use of the Class V motor vehicle water disposal system may endanger or otherwise affect the health of persons. The duration of the violation is from April 1, 2002 to January 9, 2003.

18. **Respondent is in violation** of 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.82(a)(2) and (b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering a USDW. The duration of

Respondents' violation for failure to close or retrofit the Class V disposal system is from April 1, 2002 to January 9, 2003.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

Pursuant to Section 1423(a) of the Act, 42 U.S.C. § 300h-2, and based on the foregoing findings, after taking into account:

(1) Respondents' alleged violations are serious and a threat to human health and environment; (2) Respondents gained an economic advantage over their competition by virtue of their violations; (3) EPA is unaware that Respondents have a history of violations such as these alleged in the complaint; (4) EPA is unaware of good faith efforts by Respondents to comply with applicable UIC regulations; (5) EPA, while aware that Respondents are a small

business, has no basis to believe that the proposed penalty is one which would have a severe economic impact on Respondents; and (6) such other matters as justice may require, **EPA HEREBY ORDERS:**

1. That Respondents shall pay an administrative civil penalty (the "Penalty") in the amount of ten thousand, five hundred twenty-nine dollars (\$10,529.00) for Respondents' violations of the UIC Program described above. Payment must be made by money order or certified check made payable to "Treasurer, United States of America" and mailed within thirty (30) days of the effective date of this Order to the following address:

EPA - Region 8
Regional Hearing Clerk
P.O. Box 360859
Pittsburgh, Pennsylvania 15251.

A copy of said check shall be mailed to the following address:

James H. Eppers (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

2. Respondents shall comply with all provisions of the Safe Drinking Water Act and the Underground Injection Control Program.

3. The provisions of this Order shall apply to and be binding upon Respondents, its officers, directors, agents, servants, employees, and successors or assigns.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

1. Under Section 1423(c) (3) (A) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c) (3) (A), Respondents may request, within thirty (30) days of receiving this Order, a hearing on this matter. Such request must be made in writing and must specify the factual and legal issues in dispute and the specific factual and legal grounds for Respondents' defense(s). At the hearing, Respondents may contest any material fact set forth herein and the propriety of the proposed penalty described above. The procedures for a hearing, if one is requested, are set out in 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, Rule dated July 23, 1999 64 Federal Register 141, a copy of which is enclosed with the Order. If Respondents do not request a hearing, EPA may finalize this Order, thereby assessing the full penalty proposed above.

2. Respondents must send any request for a hearing to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8, 8RC
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

Whether or not Respondents request a hearing, Respondents may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondents

may be represented by counsel at the informal conference. If a settlement is reached, it will be formalized in a document entitled Consent Agreement and finalized by the issuance of a Final Order by the Regional Judicial Officer. If Respondents wish to confer informally with EPA, please contact Jim Eppers, Enforcement Attorney, at 303-312-6893.

3. Respondents are advised that EPA is required to notify the public about this action, and that members of the public have a right under Section 1423(c) (3) (B) of the Act, 42 U.S.C. § 300h-2(c) (3) (B), to comment on this matter. Those members of the public who comment will also have the right to present evidence and be heard at any hearing on this matter.

4. EPA will review any comments submitted on the Order and will thereafter determine whether to modify or withdraw the Order or whether to issue a Final Administrative Order or whether to adjust the proposed penalty.

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 144.26 and 40 C.F.R. §144.83(a); 40 C.F.R. § 144.12(a) and 40 C.F.R. §144.82(a) (1); and 40 C.F.R. § 144.12(c) (1) and (2), and 40 C.F.R. § 144.82(a) (2) and (b) or any other applicable provision

of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this Order is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

2. Violations of the terms of this Order may subject Respondents to further enforcement action. As described in Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2), further enforcement action may include civil judicial action for injunctive relief, with possible civil penalties of up to \$27,500.00 for each day of violation, or criminal penalties, or both.

EFFECTIVE DATE

Pursuant to Section 1423(c)(3)(D) of the Act, 42 U.S.C. §300h-2(c)(3)(D), this Order becomes effective thirty (30) days

after the date of issuance noted below, unless an appeal is taken pursuant to Section 1423(c)(6) of the Act.

Issued this 12TH day of August, 2003.

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Proposed Administrative Order and Opportunity to Request a Hearing was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail Return Receipt requested mail to:

James Heil
Registered Agent
Heil Tires, Inc.
Bargain Barn Tire Center
Rapid City, SD 57702-0377

and a true copy was sent via regular U.S. Mail to:

Anita Yan
State of South Dakota
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Dated: August 27, 2003

By: SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON AUGUST 27, 2003.